IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No.34 of 2000.
Date of decision: 13.12.2007.

Subhash Mahajan **….Appellant**

Versus

L.A.C. & Another **….Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant:	**Mr.Bhupender Gupta, Senior Advocate with Mr.Neeraj Gupta,Advocate.**
For Respondent-1:	**Mr.Rajan Dewan, Additional Advocate Genera.**
For Respondent-2:	**Mr.K.D. Sood, Advocate.**

Dev Darshan Sud,J.

The appellant has preferred this appeal against the judgment of the learned Reference Court challenging the award in so far as it denies to the appellant his claim to the extent of Rs.37,90,000/- alongwith all statutory benefits under the Land Acquisition Act, 1894, (hereinafter referred to as the `Act') as alleged. Contention of the learned counsel appearing for the appellant is that the learned District Judge has not dealt with the matter in a proper manner in accordance with law.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

While considering the claim of the appellant for award of damages caused to the house of the appellant, the learned District Judge noticed that the appellant herein had obtained an ex-parte decree declaring him to be the owner as the defendant had not contested the suit. He had not assailed the decree in appeal. It was held that the petitioner had started construction of his house on the very first day when he had entered into possession of the acquired land. He then holds that no prudent man would spend an amount of more than Rs.37,00,000/- for the construction of his house on the land of another person without first acquiring title and ownership. He holds that, *"it does not appeal to reason and common sense that petitioner had constructed the house, in question in 1980-81. For this reason, I am not inclined to believe the evidence which has been led by the petitioner to the effect that he had constructed the house, in question, in 1980-81".* Thereafter, the learned District Judge also relies upon the fact that the respondent had led ample evidence to show that the house of the petitioner was not incorporated in the record of the Panchayat and, as such, was not constructed in the year 1980-81 or even thereafter before the publication of the Notification under Section 4 of the Act. He observes that when the petitioner was cross-examined regarding the source of funds to the tune of Rs.80 lacs which amount is

purported to have been spent on the construction of the house, he deposes that the amount was not withdrawn from any bank nor any loan had been taken as he was possessed all these funds which have been left behind by his forefathers.

Learned counsel appearing for the appellant submits that the determination of the issue, regarding whether the house in question had been constructed by the claimant or not, is not proper as the learned District Judge holds that the ownership of the land by the appellant had not been perfected and that he had become owner only by way of decree which was passed ex-parte in his favour.

Learned counsel appearing for the respondent has drawn my attention to the spot inspection report which is available on the record to show that even if this observation of the learned Court is excluded, spot inspection, coupled with the other factors, negativating the claim of the appellant was sufficient to hold that the claim as put forth by the appellant was fictitious and without any foundation whatsoever.

I am not pronouncing on the respective contention of the parties, save and except, that the learned District Judge, was not correct in observing that since ownership of the land had been acquired by an exparte decree against which no appeal had been filed, the very title of the appellant was under a cloud. There was ample material on the record to show

that in parallel proceedings in ***FAO No.343 of 1996, titled: M/s Associated Cement Companies Ltd. vs. Subhash Chand and another, decided on 4th December, 1997***, where an injunction had been sought by the present appellant, this Court had prima facie opined that the claimant was the owner of the land and structure standing thereon. The relevant observation made by the Court is:-

> *"After hearing both the sides, we are of the view that there are no merits in the appeal. Prima facie the view taken by the learned District Judge that prior to the issue of 4(1) notification the house was constructed, appears to be correct. The conclusion in that behalf was based upon the plaint dated 26.9.1992 in a suit filed by the respondent herein against one Prem Lal in which it was specifically averred that the house in question was constructed. As Section 4(1) notification was subsequent to the filing of the aforesaid suit, we are inclined to agree with the view taken by the learned District Judge that the balance of convenience was in favour of granting interim injunction in favour of the respondent herein. We, therefore, dismiss the appeal with no order as to costs".*

In the facts and circumstances of the case, the matter is remanded to the learned Reference Court with the following directions:-

(a) That he will re-determine the issue as to whether the claimant had constructed the house and was entitle to compensation for the house alleged to have been constructed by him on the acquired land and the quantum of compensation payable, if any. He will be uninfluenced by any observation which may have been made in this order. Such determination will be made on the basis of the evidence already on record, in accordance with law including the inspection note of the Court. No further evidence will be led.

The parties are directed to appear before the learned District Judge on ***7th January, 2008***. The learned District Judge shall ensure that the matter is disposed of within a period of not later than six months from the date when the parties first put in appearance before him.

There shall be no order as to costs.

December 13, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**